

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case Number 03-20032-BC  
Case Number 05-20038-BC  
Honorable Thomas L. Ludington

LEWIS ALEXANDER PELTIER

Defendant.

/

**ORDER DIRECTING DEFENSE COUNSEL TO SHOW CAUSE, APPOINTING CO-COUNSEL, AND ADJOURNING SENTENCING HEARING**

On February 8, 2007, the Court received a communication from the probation department reciting several concerns it had in connection with a presentence interview of the defendant, Lewis Alexander Peltier. The correspondence states that attorney Jerold C. Smith slept through a significant portion of that interview, which apparently prompted a letter on January 16, 2007 from his client apologizing for his attorney's conduct. Further, at the interview, defense counsel indicated that he wished to submit a statement on behalf of his client explaining the defendant's version of his involvement in the charged offenses. As a result of that request, no discussion with the defendant concerning his behavior in the offenses occurred. A discussion about the defendant's behavior is critical to an accurate scoring of the sentencing guidelines and this Court's consideration of a reduction in points for the defendant's acceptance of responsibility.

To prepare the presentence report in time for sentencing, counsel was told to submit the statement by January 25, 2007. To date, Smith has not provided the statement despite several attempts to contact him by phone and email. Moreover, Smith's conduct at the interview is not the first instance giving rise to concern. On August 2, 2006, this Court's predecessor ordered attorney

Smith to show cause why he should not be held in contempt for failing to appear for his client's final pretrial hearing.

On December 19, 2006, Smith again did not appear for a rescheduled final pretrial hearing. As a result, this Court was forced to adjourn that hearing and direct the parties to meet to discuss certain unresolved issues. In light of defense counsel's conduct in this case, the Court will order attorney Smith to show cause in person why he should not be sanctioned for his behavior, appoint co-counsel to assist in the representation of the defendant, and adjourn the sentencing date to allow for the completion of the presentence interview and report.

Accordingly, it is **ORDERED** that attorney Jerold Smith show cause, if any, in person on **February 16, 2007 at 9:30 a.m.** why the Court should not sanction him for his substandard conduct with respect to the presentence interview.

It is further **ORDERED** that attorney Kenneth Sasse of the Federal Defender's Office is appointed as co-counsel to assist in the representation of the defendant. Attorney Sasse is directed to appear at the show cause hearing on **February 16, 2007 at 9:30 a.m.** to discuss his role in the defendant's representation.

It is further **ORDERED** that the sentencing hearing is **ADJOURNED** until **May 17, 2007 at 3:30 p.m.**

Dated: February 9, 2007

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on February 9, 2007.

s/Tracy A. Jacobs  
TRACY A. JACOBS